STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

ARBOURS AT QUINCY, LLC
a Florida limited liability company,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2025-061VW
FHFC APPLICATION NO. 2020-419BS
FHFC APPLICATION NO. 2019-569C

PETITION FOR WAIVER OF RULES 67-48.0072(17)(h) AND 67-21.026(13)(g) FLORIDA ADMINISTRATIVE CODE ALLOWING GENERAL CONTRACTOR-SUBCONTRACTOR AFFILIATION

ARBOURS AT QUINCY, LLC, a Florida limited liability company ("Petitioner"), by and through its undersigned counsel, and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C.") (2023), hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(17)(h)[1] F.A.C. (2019) and Rule 67-21.026(13)(g)[2] F.A.C. (2019) (the "Rules"). The waiver sought is to permit the General Contractor (as defined herein) to engage an affiliated entity as a subcontractor in connection with the development of the Development (as defined herein). In support, Petitioner states the following:

THE PETITIONER

[1] The Rule citation in the above text is the Rule citation that was current at the time Petitioner applied to Florida Housing Finance Corporation's RFA 2019-116. Currently in the Florida Administrative Code, this is Rule 67-48.0072(17)***(i)***

[2] The Rule citation in the above text is the Rule citation that was current at the time Petitioner applied to Florida Housing Finance Corporation's RFA 2019-116. Currently in the Florida Administrative Code, this is Rule 67-21.026(13)***(h)***.

1. The address, telephone number and email address of the Petitioner is:

Arbours at Quincy, LLC
242 Inverness Center Drive
Birmingham, AL 35242

Attn: Sam Johnston
Telephone: (205) 981-3300
Email: sam@arbourvalley.com

Attn: Taylor Price
Telephone: (205) 981-3300
Email: taylor@arbourvalley.com

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Coleman Talley LLP
1 Independent Dr, Suite 3130
Jacksonville, FL 32202

Attn: Gregory Q. Clark, Esq.
Telephone: (904) 456-8960
Email: greg.clark@colemantalley.com
Facsimile: (904) 456-8948

Attn: Hannah Anderson, Esq.
Telephone: (904) 456-8962
Email: hannah.anderson@colemantalley.com
Facsimile: (904) 456-8948

THE DEVELOPMENT

3. On December 30, 2019, Petitioner timely submitted an application in response to the Corporation's RFA 2019-116, with application numbers of 2020-419BS and 2019-569C (the "Applications") to finance the development and construction of an 80-unit multifamily residential apartment complex in Gadsden County, to be commonly known as Arbours at Quincy (the "Development"). Construction of the Development was completed on May 28, 2024.

THE RULES FROM WHICH WAVIER IS SOUGHT

4. Petitioner requests a waiver of Rule 67-48.0072(17)(h), F.A.C. (2019), which provides:

67-48.0072 Credit Underwriting and Loan Procedures.

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(17) The General Contractor must meet the following conditions:

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> (h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer.[3] For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

5. Additionally, Petitioner requests a waiver of Rule 67-21.026(13)(g), F.A.C. (2019), which provides:

67-21.026 HC Credit Underwriting Procedures.

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(13) The General Contractor must meet the following conditions:

***

> (g) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of with the General Contractor or the Developer.[4] For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

STATUTE IMPLEMENTED BY THE RULES

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[3] Under the current Rule, 67-48.0072(17)*(i)*, this sentence reads "… or is an Affiliate of the General Contractor, Developer, or Applicant." The addition of "Applicant" to the current rule would not change our analysis, as the relevant party is the General Contractor.

[4] Under the current Rule, 67-21.026(13)*(h)*, this sentence reads "… or is an Affiliate of the General Contractor, Developer, or Applicant." The addition of "Applicant" to the current rule would not change our analysis, as the relevant party is the General Contractor.

6. The Rules implement, among other sections of the Florida Housing Finance Corporation Act ("Act"), the statute that created the Housing Tax Credit Program and authorizes the Corporation to establish procedures for allocating low-income housing tax credits. See § 420.5099, Fla. Stat.

JUSTIFICATION FOR GRANTING A WAIVER OF THE RULES

7. The Petitioner engaged Doug Hollyhand Realty, Inc., an Alabama corporation (the "General Contractor") to oversee and manage the construction of the Project, including coordinating all phases of development, hiring and supervising subcontractors, maintaining project schedules and budgets, and delivering the completed improvements in accordance with approved plans and specifications.

8. The General Contractor engaged Livingston Construction, Inc., an Alabama corporation (the "Subcontractor") to perform framing work on the Development, including the framing of all buildings and accessory structures, decking, sheathing, and hardware and window installation. Construction was completed in 2024.

9. Upon receipt of the General Contractor's Cost Certification, the Petitioner became aware that Amanda Livingston: (i) is the daughter of Doug Hollyhand, the owner of the General Contractor; (ii) is married to Wesley Livingston, the owner of the Subcontractor; (iii) holds an ownership interest in the General Contractor; but (iv) does not hold an ownership interest in the Subcontractor.

10. Rule 67-48.002(5), F.A.C. states the following:

67-48.002(5) Definitions.

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(5) "Affiliate" means any person that:

(a) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer;
(b) Serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer;
(c) Directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-48.0075, F.A.C., or
(d) Is the spouse, parent, child, sibling, or relative by marriage of a person described in paragraph (a), (b) or (c), above.

11. Rule 67-21.002(5), F.A.C. states the following:

67-21.002(5) Definitions.

***

(5) "Affiliate" means any person that:

(e) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer;
(f) Serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer;
(g) Directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-21.0025, F.A.C., or
(h) Is the spouse, parent, child, sibling, or relative by marriage of a person described in paragraph (a), (b) or (c), above.

As a result of the familial and ownership relationships previously described herein, we believe the Subcontractor qualifies as an "Affiliate" of the General Contractor as defined in Rules 67-48.002(5), F.A.C and 67-21.002(5), F.A.C.

12. The Subcontractor was selected through a competitive bidding process, during which the General Contractor solicited proposals from multiple framing subcontractors. The

Subcontractor submitted the lowest responsive and responsible bid, demonstrating both cost-effectiveness and the technical expertise necessary to perform the required scope of work. The selection was made based on objective criteria, including price, qualifications, prior experience with similar projects, and capacity to meet the project's timeline and quality standards.

13. Alternative bids received during the procurement process were significantly higher in cost and, in some cases, lacked comparable experience with low-income housing developments. The bid received from the Subcontractor totaled $617,500, whereas alternative bids from Bigford Enterprises, Inc. and Longleaf Solutions, LLC, totaled $720,000 and $716,000, respectively. The alternative bids were equivalent and comparable with regards to the scope of the work to be performed. Selecting a different subcontractor would have materially increased the overall development budget by a minimum of $98,500, potentially jeopardizing the financial feasibility of the Project. The Petitioner is committed to prudent stewardship of public and private resources, and the engagement of the Subcontractor supports that goal by ensuring high-quality work at the most competitive rate available.

14. The geographic location of the Project, Gadsden County, combined with ongoing construction labor shortages in the Panhandle region of Florida, has contributed to a limited pool of available and qualified framing subcontractors. Due to the high risk of rising interest rates at the time of commencement of the Project, a substantial amount of affordable housing projects in the Panhandle region commenced contemporaneously. This sudden influx of development caused a shortage of an already limited pool of reliable framing subcontractors in the region. These market conditions have made it particularly challenging to identify subcontractors with the capacity, reliability, and experience necessary to meet the demands of the Project. The affiliated Subcontractor was not only available but also uniquely positioned to mobilize quickly and

perform the required work without delay, thereby supporting timely project delivery and compliance with funding deadlines.

15. In an attempt to undo the effect of the General Contractor subcontracting to the Subcontractor, the Petitioner and General Contractor have agreed that no General Contractor Fee will be taken on the costs subcontracted to the Subcontractor. Moreover, Petitioner has not paid a General Contractor Fee for the costs subcontracted to the Subcontractor.

16. Pursuant to Section 120.542 Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

17. "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. Further, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. See Fla. Stat. § 120.542(2).

18. Petitioner would suffer substantial economic hardship absent the rule waiver. Due to decreased tax credit equity pricing, rising insurance premiums, inflated construction costs and interest rates, among other unforeseen circumstances related to the Development, Petitioner has determined that it would not be financially feasible to keep the Development affordable if the housing credit allocation awarded to the Development were rescinded.

19. A denial of the Rules waiver would violate principles of fairness as it would operate to deprive the citizens of Gadsden County of additional housing units at a time when the demand for both affordable and market rate housing continues to increase.

20. The purpose of the Act will be achieved if the rule waiver is granted. The Act was passed to encourage private and public investment in facilities for persons of low-income, and the purpose of the Housing Tax Credit Program is to stimulate and prioritize initiatives to increase the supply of affordable housing.

21. By granting the requested waiver, the Corporation would recognize the goal of providing persons of low-income with affordable housing through private investment and would ensure that the affordable housing units of the Development as applied for be preserved and made available for Gadsden County residents to obtain decent, safe, and sanitary housing.

22. In addition, granting the requested waiver will not adversely affect the Development or the Corporation. On the contrary, it will help ensure the continued availability of 80 affordable housing units for the intended target population. Strict application of the Rules would impose a substantial hardship on the Petitioner, as failure to meet the Rules' technical requirements could result in the rescission of the housing credit allocation awarded to the Development, thereby undermining its financial viability and public benefit.

TYPE OF WAIVER

23. The waivers or variances being sought are permanent in nature.

ACTION REQUESTED

24. For clarification purposes, the Petitioner respectfully requests the Corporation: (i) Grant Petitioner the requested permanent waiver of Rule 67-48.0072(17)(h) F.A.C. (2019) and Rule 67-21.026(13)(g) F.A.C. (2019), and specifically, a waiver of the rule such that General

Contractor may engage the Subcontractor as a subcontractor for the Development on the conditions (1) that no General Contractor Fee has been, nor will be taken on the costs subcontracted to its affiliated entity; (2) that no Developer Fee will be taken on the costs subcontracted to the affiliated entities; and (3) that an independent Certified Public Accountant has confirmed all payments between the affiliated entities and to the eight subcontractors representing 40% of the costs that are already required to be confirmed; (ii) grant the Petition and all the relief requested therein; and (iii) award such further relief as may be deemed appropriate.

25. A copy of the Petition has been provided to the Joint Administration Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399-1400, as required by § 120.542(5), Florida Statutes.

Respectfully submitted this 19th day of November, 2025.

Hannah Anderson, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
japc@leg.state.fl.us

This 14th day of November 2025

By: Hannah Anderson, Esq.
Fla. Bar No. 1003186